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BATTLE BORN INVESTMENTS COMPANY,
9 LLC, FIRST 100, LLC and 1ST ONE
HUNDRED HOLDINGS, LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

15 UNITED STATES OF AMERICA,

Plaintiff,

V.

Approximately 69,370 Bitcoin (BTC), Bitcoin Gold (BTG), Bitcoin SV (BSV), and Bitcoin Cash (BCH) seized from 1HQ3Go3ggs8pFnXuHVHRytPCq5fGG8Hbhx,

Defendant.

22 Battle Born Investments Company, LLC, First
100, LLC, and 1st One Hundred Holdings, LLC.

Claimants.

Case No. 3:20-cv-07811-RS

**CLAIMANTS BATTLE BORN
INVESTMENTS COMPANY, LLC; FIRST
100, LLC; AND 1ST ONE HUNDRED
HOLDINGS, LLC'S REPLY IN SUPPORT
OF MOTION FOR ENTRY OF FINAL
JUDGMENT PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 54(B)**

Date: June 9, 2022

Time: 1:30 p.m.

Ctrm: 3 (Via Zoom)

Chief Judge Richard Seeborg

Trial Date: None Set

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INTRODUCTION

2 The Government has given this Court no good reason to deny the Battle Born Claimants
3 the opportunity to immediately appeal. Both prongs of the *AmerisourceBergen* test—judicial-
4 administrative interests and equitable interests—favor certification of a Rule 54(b) judgment.
5 The Court should grant the motion and enter judgment.

ARGUMENT

I. The judicial-administrative interests at stake favor granting the motion.

8 According to the Government, allowing an appeal now would “eviscerat[e] . . . the orderly
9 and efficient administration of justice” by causing inconsistent judgments and duplicative appeals.
10 Opp. at 2:4-6. Under no possible scenario will a Ninth Circuit decision on the narrow question at
11 issue—whether the Battle Born Claimants’ allegations and evidence met the standards for
12 standing at this juncture—conflict with any judgment of this Court. Nor does that narrow question
13 involve any of the facts or legal issues that are relevant to the other claimants’ claims or the
14 Government’s forfeiture theory.

A. An immediate appeal presents no risk of inconsistent judgments.

16 The Government fears that permitting an appeal would result in inconsistent judgments.
17 Opp. at 5. It will not. The flaw in the Government’s argument is its mistaken belief that
18 permitting the Battle Born Claimants to appeal now could result in the Ninth Circuit deciding that
19 they have a “valid interest[] in the Defendant Property.” *Id.* at 5:16-25 (arguing that it is
20 “logically impossible” for all of the claimants to “possibly have simultaneous interests in the
21 Defendant Property”). That is not a possible result of an appeal. If the Battle Born Claimants are
22 permitted to appeal and win a reversal, the Ninth Circuit will not have concluded that the Battle
23 Born Claimants have an interest in the *res* that conflicts with the Government’s or any other
24 claimant’s rights to it. The Ninth Circuit will only have decided that the Battle Born Claimants
25 overcame summary judgment and judgment on the pleadings by putting forth sufficient facts to
26 state a colorable interest in the property, and therefore have standing to litigate ownership in this
27 Court. Whether the Battle Born Claimants put forth sufficient facts to state a colorable interest
28 was the only issue raised by the Government’s motion to strike and is the only one that could be

1 appealed. *See United States v. \$999,830.00 in U.S. Currency*, 704 F.3d 1042, 1042–43 (9th Cir.
 2 2012) (if motion to strike is a pleading motion, claimant must only make an “unequivocal
 3 assertion of ownership” to “establish[] Article III standing”); *United States v. JP Morgan Chase*
 4 *Bank Account Number Ending in 8215*, 835 F.3d 1159, 1164 (9th Cir. 2016) (if motion to strike is
 5 a summary-judgment motion, “a claimant need not *prove* standing by a preponderance of the
 6 evidence to survive summary judgment” but instead must only submit sufficient evidence “for a
 7 reasonable factfinder to conclude that the claimant has standing to challenge the forfeiture”)
 8 (internal quotation marks omitted). It is logically consistent for more than one claimant to have
 9 alleged a colorable interest in the *res*, and the only consequence of multiple claimants having
 10 made that adequate preliminary showing of standing is that the Government’s forfeiture theory
 11 will be tested by more than one party.

12 There is no scenario under which permitting an appeal could result in inconsistent
 13 judgments. If the Battle Born Claimants take an appeal now, either (1) the Ninth Circuit will
 14 decide the appeal before this Court issues a final judgment awarding the *res* to the Government or
 15 another claimant or (2) this Court will reach a final judgment before the Ninth Circuit issues its
 16 decision on the appeal. In the first scenario, if the Ninth Circuit rules in favor of the Battle Born
 17 Claimants,¹ the Ninth Circuit would remand and the Battle Born Claimants would be allowed to
 18 participate in the remaining proceedings before this Court. No inconsistent judgments could
 19 result. In the second scenario, all appeals would be before the Ninth Circuit simultaneously, and
 20 the Ninth Circuit could consolidate them and decide them at once if it chose. *See Fed. R. App. P.*
 21 3(b)(2) (“[A]ppeals may be joined or consolidated by the court of appeals.”). Again, no
 22 inconsistent judgments would result.

23 / / /

24 / / /

25 / / /

26 / / /

27 _____
 28 ¹ Needless to say, no inconsistent judgment would result from an immediate appeal if the Ninth
 Circuit were to affirm the order striking the Battle Born Claimants’ claim.

B. The Battle Born Claimants' Article III standing does not concern the other claimants or the allegations in the Government's forfeiture complaint.

3 The Government advances a series of vague arguments about piecemeal appeals. It
4 contends that allowing the Battle Born Claimants to appeal now would result in multiple appeals
5 with overlapping issues because all of the claimants' claims implicate "overarching principle[s]"
6 of "[s]tanding" and have a "common thread" with the Government's forfeiture theory. Opp. at
7 6:5-10. None of those arguments withstand scrutiny.

8 While it is true that the Government moved to strike other claimants' claims for lack of
9 standing, it is not true that the Court in analyzing those claimants' standing had to consider any of
10 the same issues that it considered when it struck the Battle Born Claimants' claim. The standing
11 analysis concerns whether a claimant has alleged or presented "some evidence" that the claimant
12 holds a property interest in the *res*. *United States v. \$133,420.00 in U.S. Currency*, 672 F.3d 629,
13 637-38 (9th Cir. 2012). Because each claimant in this case alleged a different relationship to the
14 *res*, the facts implicated by that analysis differed as to each claimant. Indeed, the Government
15 concedes as much when it says that "[e]ach claimant asserts ownership of the same asset, *albeit in*
16 *differing ways*" and describes the distinct ownership theories of the claimants. Opp. at 6:17-18
17 (emphasis added).

18 The factual and legal issues pertinent to the Battle Born Claimants’ standing are also
19 distinct from the “operative facts from the Amended Complaint.” Opp. at 6:12-13. The facts
20 alleged in the complaint concern the Government’s theory that the property is subject to forfeiture
21 because it is “directly traceable to illicit funds in wallets belonging to Silk Road.” *Id.* at 6:15.
22 The federal courts of appeals have repeatedly held that the merits of the Government’s theory
23 of forfeiture has no place in the standing analysis. *United States v. Seventeen Thousand Nine*
24 *Hundred Dollars (\$17,900.00) in United States Currency*, 859 F.3d 1085, 1091 (D.C. Cir. 2017);
25 *United States v. Funds in the Amount of \$239,400*, 795 F.3d 639 (7th Cir. 2015); *United States v.*
26 *One-Sixth Share of James J. Bulger In All Present And Future Proceeds Of Mass Millions Lottery*
27 *Ticket No. M246233*, 326 F.3d 36, 41 (1st Cir. 2003). The reason that the courts have adopted
28 “the ‘some evidence’ standard” for standing is to “preserve[] the important distinction between

1 constitutional standing and the merits" by preventing a claimant from having to address the merits
 2 of the Government's case and "prove that her property is unconnected to unlawful activity."
 3 *Seventeen Thousand Nine Hundred Dollars*, 859 F.3d at 1091. Notwithstanding the Government's
 4 argument to this Court that the facts underlying the Battle Born Claimants' claim to ownership are
 5 inconsistent with the Government's uncontested version of the facts,² the Government cannot
 6 properly achieve a dismissal for lack of standing by showing that "a claimant's account of
 7 ownership is irreconcilable with the theory upon which the government seeks forfeiture." *See id.*
 8 (holding that the government could not argue that claimants "lack[] Article III standing because
 9 their claimed ownership interest is undercut by 'the record evidence' indicating that 'this is drug
 10 trafficking money'"); *see also United States v. Funds in the Amount of \$239,400*, 795 F.3d 639,
 11 646 (7th Cir. 2015). When "the government moves for summary judgment on standing in a civil
 12 forfeiture action," the claimant is not required to address whether the property is "subject to
 13 forfeiture" because such a "melding of standing and the merits" would "shift" the government's
 14 burden of proof on forfeitability to the claimant. *Funds in the Amount of \$239,400*, 795 F.3d at
 15 646 (claimant is not required to "demonstrate 'legitimate' ownership" to establish standing).
 16 Therefore, here, whether the property is linked to criminal activity because it is "directly traceable
 17 to illicit funds in wallets belonging to Silk Road" as the Government alleges, Opp. at 6:15, was not
 18 before this Court when it struck the Battle Born Claimants' claim and will not be before the Ninth
 19 Circuit in an appeal taken now. The appeal will only concern whether the Battle Born Claimants'
 20 met the judgment-on-the-pleadings or summary-judgment standards for standing with their
 21 allegations and evidence that Raymond Ngan owned the bitcoin, and therefore that the Battle Born
 22 Claimants now own it as successors to Ngan's estate.

23

24 ² See Dkt. No. 90 (Government's Mot. to Strike Battle Born Claimants' Claim) at 25 (arguing that
 25 "Claimants have no standing because Raymond Ngan and his associates are not Individual X," the
 26 person that the Government claims stole the bitcoin from Silk Road), 29 (arguing that the Battle
 27 Born Claimants lack standing because "the court must consider . . . validity of title" and the
 28 bitcoin is "proceeds of narcotics trafficking") (capitalization omitted); *see also* Dkt. No. 104
 (Order Granting Mot. to Strike Battle Born Claimants' Claim), at 8-9 (accepting the Government's
 argument that the Battle Born Claimants were required to show "some association with Individual
 X" and "lawful ownership" of the bitcoin in order to defeat the motion to strike for lack of
 standing).

1 **II. The equities favor granting the motion.**

2 Under Rule 54(b), this Court should certify a judgment if “there is no just reason for
 3 delay.” The Government has identified no equitable considerations that favor delay, agrees that
 4 delaying the appellate process would prejudice all of the claimants, and does not dispute that the
 5 Battle Born Claimants should be permitted to appeal now if they will be unable to appeal at final
 6 judgment. The Government’s contention that the Court should nevertheless disregard as
 7 “theoretical” the prejudices identified by the Battle Born Claimants is meritless.

8 **A. The Government admits that “slowing” the appellate process will**
 9 **“negatively impact all claimants.”**

10 The Government concedes that “slowing the appellate process” would prejudice the parties
 11 and is a proper consideration in weighing the equities. Opp. at 7:12-14. The Government makes
 12 the odd claim, however, that allowing the Battle Born Claimants to appeal sooner rather than later
 13 will somehow “slow[] the appellate process.” *Id.* It is difficult to see how. An early appeal could
 14 only expedite the appellate process by allowing early resolution of the Battle Born Claimants’
 15 right to participate in this case.

16 **B. The Government’s Opposition provides no assurances that the Battle**
 17 **Born Claimants will be able to appeal the final judgment or that the**
 18 **Government will agree to a stay of the judgment.**

19 In their motion, the Battle Born Claimants explained that they should be allowed to take an
 20 appeal now because there is a risk, given the unsettled state of the case law, that the Ninth Circuit
 21 might conclude that they cannot appeal the final judgment. While the Battle Born Claimants
 22 believe they should have the right to appeal the final judgment, as dismissed parties do in other
 23 multi-party contexts, the right of a dismissed forfeiture claimant to forego an interlocutory appeal
 24 and then appeal a final judgment—when the claimant is no longer a party to the case—has not
 25 been expressly recognized by the Ninth Circuit. And there is Ninth Circuit law relating to
 26 intervenors that the Government might use to argue that the Battle Born Claimants should not be
 27 allowed to appeal a final judgment. The Government declined to disavow such an argument in its
 28 Opposition. By skirting the issue, the Government has validated the Battle Born Claimants’
 concern.

1 Instead, the Government's response is that this concern is too "theoretical" to be given any
 2 weight because there are currently "no cases" that apply "the 30-day jurisdictional intervenor
 3 deadline to a civil forfeiture case." Opp. at 7:20-21. That is exactly the problem: the law on the
 4 issue of when a stricken forfeiture claimant may appeal is not clearly articulated in this circuit and
 5 the Government could claim in the future that the Battle Born Claimants should be treated as
 6 intervenors and denied a right of appeal. If the Battle Born Claimants are denied the opportunity
 7 to appeal now, the issue of whether they can appeal the final judgment will be before the Ninth
 8 Circuit. It is therefore not theoretical that the Ninth Circuit will be asked to rule on it.

9 Moreover, the Government's position that the Battle Born Claimants' concern is too
 10 theoretical rests on the Government's incorrect belief that the Ninth Circuit has referred to civil-
 11 forfeiture claimants as intervenors only "passingly." Opp. at 7:17-18. That is not an accurate
 12 characterization of circuit precedent. The Ninth Circuit has held that an "owner-claimant" in a
 13 civil-forfeiture action "*is . . . an intervenor* who seeks to defend his or her right to the property
 14 against the government's claim." *United States v. One 1985 Mercedes*, 917 F.2d 415, 419 (9th
 15 Cir. 1990) (emphasis added); *United States v. \$84,740.00 Currency*, 981 F.2d 1110, 1114 (9th Cir.
 16 1992) (same). The other federal circuits likewise uniformly equate civil-forfeiture claimants with
 17 intervenors. *See, e.g., United States v. Phillips*, 883 F.3d 399, 404–05 (4th Cir. 2018) ("[I]n civil
 18 forfeiture cases, a claimant with standing may intervene . . . to contest the forfeiture on the
 19 merits."); *United States v. All Funds in Account Nos. 747.034/278, 747.009/278, & 747.714/278*
 20 *Banco Espanol de Credito, Spain*, 295 F.3d 23, 25 (D.C. Cir. 2002) (in "[c]ivil forfeiture actions,
 21 . . . [t]he owner of the property may intervene to protect his interest"); *United States v. Contents of*
 22 *Accounts Numbers 3034504504 and 144-07143 at Merrill, Lynch, Pierce, Fenner and Smith, Inc.*,
 23 971 F.2d 974, 978 n.3 (3d Cir. 1992) ("[A]ny claimants to th[e] *res*" in a civil-forfeiture action
 24 "assert their claims by intervening in the action."); *One-Sixth Share of James J. Bulger*, 326 F.3d
 25 at 40 (referring to claimants as intervenors). It is therefore entirely plausible that the Ninth Circuit
 26 could extend to forfeiture claimants a rule that is currently applicable to intervenors.

27 Citing *United States v. \$493,850.00 in U.S. Currency*, the Battle Born Claimants also
 28 raised the concern in their motion that the Court of Appeals might rule that it lacks jurisdiction

1 over an appeal from the final judgment if this Court ultimately awards the *res* to the Government,
 2 and the Government refuses to agree to a stay of the judgment pending appeal or to agree to
 3 substitute proceeds from the sale of the bitcoin in place of the bitcoin. 518 F.3d 1159, 1164 (9th
 4 Cir. 2008). Again, the Government could have alleviated the concern by committing to a stay or
 5 substitution, or disavowing any intent to execute a judgment in its favor pending appeal. It chose
 6 not to. Instead, the Government maintains that *\$493,850.00 in U.S. Currency* is distinguishable
 7 because the claimant in that case affirmatively “consent[ed]” to execution of the judgment. Opp.
 8 at 8:5-7. There is no support for that reading of *\$493,850.00 in U.S. Currency*, and the
 9 Government cites no other authority for it. Jurisdiction was lost over the truck at issue in that case
 10 not because the appellant affirmatively agreed that the truck could be sold, but because the Court
 11 had granted no stay as to it, there was no agreement to substitute proceeds from the sale of the
 12 truck, and judgment as to the truck was executed. *\$493,850.00 in U.S. Currency*, 518 F.3d at
 13 1163–64. The same could happen here if the Government does not agree to a stay or a
 14 substitution, and the Court denies a motion for a stay. A claimant may not have the power to
 15 avoid this outcome by unilaterally withholding its consent.

16 The Government also makes a contradictory arguments that the Battle Born Claimants’
 17 concern is “premature” yet could be “resolve[d] at this juncture” if only Claimants would post a
 18 bond. Opp. at 8:12-13. It is not premature to express a concern that if denied the opportunity to
 19 appeal now, the Battle Born Claimants may never get the chance. A motion requesting authority
 20 to appeal is the correct time to express such a concern. It would make no sense to post a bond or
 21 otherwise seek a stay at this juncture, when the *res* has not yet been awarded to any party and there
 22 is no judgment to stay pending appeal. Regardless, it would not be possible to post a bond to
 23 secure a *res* worth over \$2 billion.

24 C. **The volatility of the value of the asset favors a swift return to the**
 25 **rightful owner.**

26 The Battle Born Claimants also pointed out that they are prejudiced by delay because the
 27 value of bitcoin is extremely volatile. The Government acknowledges that “volatility . . . is a
 28 well-known feature of cryptocurrency” but questions how that fact should be weighed. Opp. at

1 8:21. Volatility favors returning control over the asset to the owners as quickly as possible, so that
 2 the owners may use their judgment to determine the appropriate time to hold and sell part or all of
 3 their bitcoin. The Government notes that Rule G(7)(b) of the Supplemental Rules for Admiralty
 4 or Maritime Claims and Asset Forfeiture Actions “provides a mechanism for the parties to file a
 5 motion to sell the Defendant Property.” *Id.* at 8:25-26. Even if the Battle Born Claimants could
 6 use that procedure, which is reserved for “a party or a person having custody of the property,” it
 7 requires a noticed motion and a court order approving any sale. It is therefore no substitute for the
 8 ability to manage the asset that full control affords.

9 **CONCLUSION**

10 The Battle Born Claimants could face significant prejudices if they are not permitted to
 11 appeal now. Those prejudices necessarily “outbalance[]” the “costs and risks” of allowing an
 12 immediate appeal now, because there are no costs and risks. *See Morrison Knudsen Co. v. Archer,*
 13 655 F.2d 962, 965 (9th Cir. 1981). The analysis favors entering a Rule 54(b) judgment.

14
 15 DATED: May 23, 2022

COBLENTZ PATCH DUFFY & BASS LLP

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